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NO. 534

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

KARL BUZYNSKI, Petitioner.

vs.

LUCKENBACH STEAMSHIP CO., Et Al, Respondents.

Brief in Support of Petition for Writ of Certiorari.

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SMITH & JOYCE, PRINTERS, GALV.

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To the Honorable The Supreme Court of the United States:

Since the Petitioner filed his petition for a Writ of Certiorari in this case the Circuit Court of Appeals for the Fourth Circuit in the case of "The Haraldshaug" 20 Fed. (2nd Series) Advance Sheets, page 337, has rendered an opinion in which it holds that it is "incumbent upon the ship to keep the appliances in use in reasonable safe repair and condition, and this duty included that of making seasonable inspection and examinations of such appliances." The foregoing opinion states the same rule as the Second Circuit Court stated in the case of Pleckaitis vs. Henrick, etc., 294 Fed. 824, and therefore the rule stated by the Circuit Court of Appeals for the Fifth Circuit in this case is

in direct conflict and out of harmony with the rules of the Second and Fourth Circuit Courts of Appeals.

In reversing this case (Luckenbach S. S. Co. et al. vs. Buzynski) 19 Federal (2nd Series) Advance Sheets 873, the Circuit Court of Appeals says: "However, it owed him the duty of using reasonable care to furnish him with reasonably safe appliances to work with, suitable to the work being done, and of inspecting these appliances * * * before turning them over to the contracting company. * * * * If thereafter the appliances became defective through use while in charge of the contracting company it was necessary * * * * for that fact to be brought home to the steamship company to impress it with liability." Citing Navigazione Atla Italia vs. Vale (C. C. A.) 221 F. 413.

In the case of "The Haraldshaug" 20 Fed. (2nd Series) Advance Sheets, 337, the Circuit Court of Appeals for the Fourth Circuit says: "That the ship is liable to one so employed, for damages arising from defects in its appliances, and for the failure to exercise reasonable care in furnishing suitable appliances for unloading the ship, is not disputable, * * * * and it is incumbent upon the ship to keep the appliances in use in reasonable safe * * * * repair and condition, and this duty included that of making seasonable inspections and examinations of such appliances." citing a large number of cases including the case of Pleckaitis vs. Henrik Ostervolze Docking Co., (C. C. A. 2nd Circuit) 294 F. 824. In the latter case the Second Circuit Court of Appeals uses almost the same language as the Fourth Circuit Court of Appeals, for the former Court says: "It was incumbent upon them to keep the appliances in use in reasonable safe repair, and this duty included that of making inspections and examinations at proper intervals."

A comparison of the case of Navigazione Atla Italia vs. Vale (5th C. C. A.) 221 Fed. 413, with the case of "The

Haraldshaug" (4th C. C. A.) 20 Fed. (2nd Series) Advance Sheets 337, shows how the application of the rule in the Fifth Circuit Court denies a stevedore a right of recovery when, upon the very same state of facts, the rule of the Fourth and Second Circuit Courts give a stevedore a right of recovery.

In both of these cases a rope sling broke and the load dropped on a stevedore, injuring him. Under the rule in the Fifth Circuit Court the stevedore was not permitted to recover damages, although the court found the sling was defective at the time he was injured, because it held the ship was not required to keep its appliances in safe repair or to make inspections or examinations of the appliances after they were turned over to the Employing Stevedore. Whereas, in the Fourth Circuit the stevedore was held entitled to recover because it held that the ship owed the continuing duty to keep its appliances in safe repair and condition, and this duty included that of making examinations and inspections.

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Attorney for Petitioner.